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Message Text

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14
ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 GSA-01 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15
STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
OPIC-03 XMB-02 /093 W
---------- 030478
R 071048Z DEC 76
FM AMEMBASSY MADRID
TO SECSTATE WASHDC 8229
INFO AMEMBASSY PARIS

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PARIS PASS CUSTOMS

E.O. 11652: N/A
TAGS: ETRD, SP
SUBJECT: COUNTERVAILING DUTIES: ZINC

REF: MADRID 7647, 8462

1. GOS FONMIN HAS REPLIED TO OUR NOTE VERBAL OF OCTOBER 7 REQUESTING A CALCULATION OF "DESGRAVACION FISCAL" FOR UNWROUGHT ZINC. THE MAIN POINTS OF THE REPLY ARE: CASCADING EFFECT OF INDIRECT TAXES HAS BEEN EXPLAINED BY GOS TO USG ON SEVERAL PREVIOUS OCCASIONS, NOTABLY IN CONJUNCTION WITH COUNTERVAILING DUTY INVESTIGATION ON FOOTWEAR AND OLIVES; THESE EXPLANATION HAVE RESULTED IN US LEVYING COUNTERVAILING DUTIES ON AT LEAST A THIRD (IN VALUE) OS SPAIN'S EXPORTS TO THE US; THESE DUTIES CONTRAVENE GATT REGULATIONS WHILE THE DESGRAVACION FISCAL CONFORMS WITH ARTICLE XVI OF THE GATT; IN VIEW OF ALL THIS THE GOS BELIEVES THAT THE COMPLAINING
PARTIES (US ZINC COMPANIES) SHOULD PROVE THAT DESGRAVACION FISCAL CONSTITUTES A SUBSIDY RATHER THAN GOS BEING REQUIRED TO PROVE THAT IT DOES NOT.

2. THE NOTE ALSO SUGGESTS POSSIBILITY OF SPANISH RETALIATION BALANCED BY A PROPOSAL FOR ARRIVING AT AN AMICABLE SOLUTION.
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IT STATES THAT US TREASURY'S ACTION "CONSTITUTES A SERIOUS THREAT

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TO SPANISH-US TRADE..." WHICH COUPLED TO THE RECENT GATT COUNCIL EXPERTS' REPORT CALLING THE US "DISC" PROGRAM A SUBSIDY, MAY OBLIGE THE GOS TO ADOPT COUNTERMEASURES WITH RESPECT TO THE 80 PERCENT OF SPANISH IMPORTS FROM THE US BENEFITING FROM "DISC." NOTE CONTINUES WITH A PROPOSAL TO DEAL WITH COUNTERVAILING DUTIES AT THE FIRST MEETING OF THE JOINT ECONOMIC COMMITTEE FORSEEN FOR FEBRUARY.

3. OVERALL TENOR OF FONMIN REPLY IS THAT GOS SEES NO ADVANTAGE IN COOPERATING WITH USG UNVESTIGATION OF COUNTERVAILING DUTY CASES SINCE SUCH COOPERATION IN THE PAST HAS NOT, IN ITS OPINION, RESULTED IN "FAIR AND IMPARTIAL DETERMINATIONS." REPEATED STATEMENT THAT "BURDEN OF PROOF" SHOULD FALL ON PARTY BRINGING CHARGE RATHER THAN DEFENDENT (SPAIN) FOLLOWS FROM GOS ARGUMENT THAT DESGRAVACION FISCAL IS IN ACCORD WITH INTERNATIONAL NORMS AND THEREFORE CLAIMING THAT IT CONSTITUTES A SUBSIDY ARE NOT SUSTAINABLE. JUXTAPOSITION OF "GATTABLE" DESGRAVACION FISCAL WITH "NON-GATTABLE" US "DISC" PROGRAM EMPHASIZES POINT.

4. IT IS EMBASSY'S UNDERSTANDING THAT MAJORITY OF EXPORTING FIRMS IN US NOW USE DISC AND THUS IT IS NOT UNREASONABLE TO BELIEVE THAT 80 PERCENT OF US EXPORTS TO SAPIN ENJOY DISC BENEFITS. THE GATT'S PRELIMINARY FINDING THAT THE DISC IS CONTRARY TO ITS RULES PROVIDES SPAIN A NEW BASIS FOR SUGGESTING COUNTERMEASURES AGAINST US PRODUCTS. ALTHOUGH A DICEY UNDERTAKING FOR THE FIRST MEETING OF THE JOINT ECONOMIC COMMITTEE, COUNTERVAILING DUTIES ARE A PROPER AND PROBABLY INEVITABLE SUBJECT FOR ITS CONSIDERATION.

5. FULL TEXT OF FONMIN NOTE TRANSMITTED BY AIRGRAMSTABLER

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